

1 A. The ALJ Failed to Provide Germane Reasons for Rejecting Ms. French’s
 2 and Ms. Nixon’s Lay Evidence

3 “[L]ay testimony as to a claimant’s symptoms or how an impairment affects
 4 [their] ability to work *is* competent evidence and therefore *cannot* be disregarded
 5 without comment.” *Stout v. Commissioner*, 454 F.3d 1050, 1053 (9th Cir. 2006)
 6 (internal quotation marks, ellipses, and citation omitted) (emphasis in original).
 7 Appropriately, then, an ALJ may discount evidence provided by a lay witness only if
 8 he provides “reasons that are germane to each witness.” *Id.* (citing *Dodrill v.*
 9 *Shalala*, 12 F.3d 915, 919 (9th Cir. 1993)). Further, the reasons “germane to each
 10 witness” must be specific. *Stout*, 454 F.3d at 1054.

11 Here, the ALJ provided four reasons for rejecting the Third Party Function
 12 Reports (“Reports”) completed by Ms. French and Ms. Nixon. (Administrative
 13 Record (“AR”) at 415.) The Court addresses, and rejects, each below.

14 First, the ALJ rejected Ms. French’s and Ms. Nixon’s Reports because “they
 15 are not medical professionals or otherwise qualified to diagnose severe impairments
 16 or to assess their effect on the claimant’s ability to perform work related activities.”
 17 (AR at 415.) But lay witness evidence serves a *different* purpose than medical
 18 evidence and is specifically authorized by the Code. *See* 20 C.F.R. § 404.1513
 19 (discussing different uses for medical and non-medical sources). Unlike medical
 20 evidence, which is used to “*establish* whether [a claimant has] a medically
 21 determinable impairment,” lay testimony “*show[s]* the severity of [that] impairment[]
 22 and how it affects [a claimant’s] ability to work.” *Id.* §§ 404.1513(a), (d)(4)
 23 (emphasis added). The Ninth Circuit has expressly held that lay witnesses *are*
 24 competent to provide opinions on how a claimant’s impairments bear on her ability to
 25 work. *See Bruce v. Astrue*, 557 F.3d 1113, 1116 (9th Cir. 2009) (“A lay person, []
 26 though not a vocational or medical expert, [is] not disqualified from rendering an
 27 opinion as to how [a claimant’s] condition affects his ability to perform basic work
 28 activities.”) Finally, because this reason would apply to *all* lay witnesses, it is not

1 germane to Ms. French or Ms. Nixon particularly.

2 Second, the ALJ rejected the lay evidence of Ms. French and Ms. Nixon
3 because “neither of them mentions [Plaintiff’s] drug use.” (AR at 415.) However,
4 the stated purpose of the Report, provided by the Social Security Administration
5 itself, is to gather information regarding “[h]ow the disabled person’s illnesses,
6 injuries, or conditions limit her activities.” (*See id.* at 106, 576.) The Report does
7 *not* focus on the illnesses, injuries, or conditions themselves. (*See id.* at 106-21, 576-
8 83.) Nor does it ask, either explicitly or implicitly, about a claimant’s drug use. (*Id.*)
9 Rather, the Report asks very specific questions relating to a claimant’s daily routine.
10 (*Id.*) For instance, the Report asks about a claimant’s hygiene regimen, whether she
11 is able to do housework or prepare meals, and if she leaves the house to go shopping
12 or socialize. (*Id.*) As such, it appears unreasonable for the ALJ to expect Ms. Nixon
13 or Ms. French to include information relating Plaintiff’s drug use. Accordingly, this
14 reason fails.

15 Third, the ALJ rejected Ms. French’s and Ms. Nixon’s lay evidence because
16 “both the sister and niece are on SSI.” (*Id.* at 415.) While it is true that both Ms.
17 Nixon and Ms. French are disabled and receive benefits, the ALJ does not explain
18 how this fact bears on their credibility as witnesses. In fact, the Ninth Circuit has
19 previously held that rejection on such grounds is improper. *See Bruce*, 557 F.3d at
20 1116 (holding that the fact that claimant’s wife had applied for SSI “should not
21 disqualify her from rendering an opinion regarding her husband’s ability to work.
22 Nor did it have any apparent bearing on her credibility.”). Thus, as to this ground,
23 the ALJ’s analysis falls short.

24 Fourth, and finally, the ALJ rejected Ms. Nixon’s and Ms. French’s Reports
25 because they are related to Plaintiff and “live in the same household.” (AR at 415.)
26 This however, amounts to a wholesale dismissal of *any* family member who offers
27 lay evidence. *See Smolen v. Chater*, 80 F.3d 1273, 1289 (9th Cir. 1996). As such,
28 “[t]he fact that a lay witness is a family member cannot be a ground for rejecting his

1 or her testimony.” *Id.* at 1289; *see Regenettir v. Comm’r of Social Sec. Admin*, 166
2 F.3d 1294, 1298 (9th Cir. 1999). Indeed, an eyewitness who interacts with the
3 claimant on a daily basis is in a unique position to know whether the claimant is truly
4 in pain or merely malingering. *Dodrill*, 12 F.3d at 919. As such, this reason is not
5 specific to either Ms. Nixon or Ms. French, and is likewise insufficient.

6 For the reasons state above, the ALJ erred in rejecting Ms. Nixon’s and Ms.
7 French’s lay evidence. Accordingly, the Court finds that substantial evidence did not
8 support the ALJ’s decision. *See Mayes v. Massanari*, 276 F.3d 453, 458-59 (9th Cir.
9 2001).

10 B. Remand is Warranted

11 With error established, this Court has discretion to remand or reverse and
12 award benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no
13 useful purpose would be served by further proceedings, or where the record has been
14 fully developed, it is appropriate to exercise this discretion to direct an immediate
15 award of benefits. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004).
16 But where there are outstanding issues that must be resolved before a determination
17 can be made, or it is not clear from the record that the ALJ would be required to find
18 plaintiff disabled if all the evidence were properly evaluated, remand is appropriate.
19 *See id.* at 594.

20 Here, there are outstanding issues which must be resolved before a final
21 determination can be made. On remand, the ALJ shall reconsider the Reports
22 completed by Ms. Nixon and Ms. French, and either credit them or provide germane
23 reasons for rejecting it.

24 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
25 **REVERSING** the decision of the Commissioner denying benefits and
26 **REMANDING** the matter for further administrative action consistent with this

1 decision.^{2/}

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3 Dated: December 18, 2013

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Hon. Jay C. Gandhi
United States Magistrate Judge

^{2/} In light of the Court's remand instructions, it is unnecessary to address Plaintiff's remaining contentions. (*See* Joint Stip. at 5-24, 38-53.)